

**SUMMARIZED MINUTES
SCOTTSDALE TRANSPORTATION COMMISSION
RETREAT**



**THURSDAY, MARCH 30, 2006
COMMUNITY DESIGN STUDIO CONFERENCE ROOM
7506 E. INDIAN SCHOOL RD.
SCOTTSDALE, AZ 85251**

PRESENT: Mark Gilliland, Chairman
Brian Davis, Vice-Chairman
William Howard, Commissioner
Matthew Taunton, Commissioner
Kelly McCall, Commissioner

ABSENT: J. David Hill, Commissioner

STAFF PRESENT: Mary O'Connor, Transportation General Manager
Rose Arballo, Transportation Commission Coordinator
Dave Meinhart, Transportation Planning and Transit Director
Paul Porell, Traffic Engineering Director
Luis Santaella, Assistant City Attorney

CALL TO ORDER

The Scottsdale Transportation Commission Retreat was called to order by Chairman Gilliland at 3:16 p.m.

ROLL CALL

A formal roll call confirmed the members present as stated above.

1. Open Meeting Law

Mr. Santaella addressed the Commission regarding the Open Meeting Law. This law makes public business open to public attendance; it applies to all public bodies and public officials, including subcommittees.

In response to Commissioner Howard, Mr. Santaella explained the requirement of the Commission having a quorum of the members present.

In response to a question by Chairman Gilliland about how Open Meeting Laws pertain to internal staff, Mr. Santaella explained that although some officers of the City are public officers, their meetings are not subject to the Open Meeting Laws. Posting meetings for every internal staff meeting on a daily basis would be impractical. Mr. Santaella noted that the Open Meeting Law was originally enacted with large board meetings in mind and that the law has been expanded to include technological devices.

Mr. Santaella reiterated that a quorum is required to conduct public business. Because the Transportation Commission consists of seven members, their quorum would be four. He explained that a public meeting would consist of discussion or proposed legal action. It could also include any deliberations by the quorum with respect to that legal action. Basic provisions of the Open Meeting Law require that notice of the meetings be posted, that the general scope of the meeting be provided, that the agenda be made available at least 24 hours in advance, that only items on the agenda be discussed, and that minutes or an audio recording of the meeting be maintained.

Mr. Santaella reviewed situations that have the potential to violate the Open Meeting Law; including social gatherings, telephone conversations and e-mail. He noted that the Attorney General's Office had issued an opinion on e-mail and the Open Meeting Law which is available on their website. He noted that the same rules apply to e-mail as any other form of communication.

Mr. Santaella highlighted quotes from the Attorney General's Opinion: Board members must assure that business is conducted at meetings; Board Members must not use e-mail to circumvent the Open Meeting Law requirement; e-mail proposing, discussing or deciding matters that may foreseeably come before the public body for action would constitute a meeting through technological devices.

The new Attorney General emphasis on what constitutes a meeting are: discussing a legal action item, taking legal action, deliberating, or proposing. Mr. Santaella explained that a violation could occur in a one-way communication by the Commission asking staff to place the approval of an item on the agenda. Instead, the topic should be placed on the agenda for discussion.

The Attorney General suggests adding a line to all e-mails as a reminder to recipients stating, "to ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other Board Members and Board Members should not reply to this message."

Mr. Santaella clarified that the one exception to the Open Meeting Law would be an agendaized Executive Session. The most common reason for Executive Session would be to receive advice from an attorney or for discussion of a real estate transaction. No decisions may be made in an Executive Session, but advice can be given.

Commissioner McCall commented that the same rules that apply to e-mail should be inherent in the way Commissioners deal with each other in all forms of communication. Mr. Santaella confirmed the background for the Open Meeting Law is to provide clarity and visibility to the public concerning what the

government is doing and to prevent backroom deals, in order to ensure the efficiency and integrity of the government.

In response to an inquiry by Vice-Chairman Davis, Mr. Santaella explained that a conversation about an action item between two commissioners would not be a violation.

In response to a question by Chairman Gilliland, Mr. Santaella clarified that citizen e-mails could be forwarded as long as it was as an information only item. Asking staff to add citizen e-mails to the next meeting packet as an information item would be ideal.

Mr. Santaella explained that the Chairman has the option of changing the location of the meetings and that retreats are still open to the public. Executive Sessions may be needed in the middle of a meeting if there is a need for private legal counsel.

A discussion ensued regarding what the Transportation Commission's role would be in an eminent domain case. In response to a question from Commissioner Howard, Ms. O'Connor explained that the Transportation Commission would have more general discussions and the City Council would have more specific discussions. Knowledge of sensitive information would not be needed to respond to public comments, as staff does not recommend that Commissioners respond to public comment. Legal issues do not always need to be discussed in Executive Session and if an attorney is not present, the item could be placed on the agenda for the next meeting. Chairman Gilliland commented there have been situations when the presence of an attorney would have been beneficial.

In response to a question by Vice-Chairman Davis, Mr. Santaella clarified that items must be agendaized properly for discussion. Information items and items from past or future meetings cannot be discussed unless listed on the agenda. Vice-Chairman Davis opined that it would be helpful for items discussed at past meetings and that are agendaized for a future meeting to be on the Study Session agenda in the interim to allow for possible discussion.

Commissioner Howard suggested it would be helpful to have a procedure in place for discussions with the public that are out of order. A discussion ensued regarding a recent situation where the dialogue between the Commission and members of the public progressed to a point beyond what was on the agenda. Because legal counsel is not present at Transportation Commission meetings, it was decided that staff should be responsible for suggesting caution in situations of possible Open Meeting Law violations. Ms. O'Connor suggested that unless information is needed immediately, it is generally not wise for Commissioners to respond to public comment.

Mr. Santaella clarified that any member of the public can attend meetings even though there is no public right to speak. It is allowed as a courtesy. Ms. O'Connor expounded by stating that non-speaking public comment cards do not need to be read verbatim--they could be summarized. Chairman Gilliland stated he would rather not read or paraphrase them. In the future, comment cards will

be entered into the public record without being read. Mr. Santaella suggested that the decision not to read comment cards should be entered into the bylaws.

Commissioner Taunton suggested that the procedure for Commissioners to ask questions be changed so that all questions go through the Chair first. Ms. O'Connor agreed that having permission from the Chair to speak would make a smoother, more formal meeting. Public comment should be limited to three minutes with no rebuttal after Commissioner comments in order to allow for everyone to have an opportunity to voice their views. In response to a comment by Commissioner McCall that there are many times when the Commissioners would like clarification from citizens, Chairman Gilliland opined that in that case a formal request for the party to return to the podium should be made.

Commissioner Taunton reminded the Commission of a meeting where John Berry gave a presentation and was able to give a rebuttal to the Commissioner comments. This is normally not allowed. Chairman Gilliland agreed. He stated that the situation was not handled properly with the fact that Mr. Berry was in control of the discussion, the presentation, and the responses. Mr. Meinhart suggested that the Transportation Commission clarify their procedure so there is no confusion in the future.

Commissioner Howard commented that from the way the presentation had been done, it appeared that Mr. Berry was staff. In response to a comment by Ms. O'Connor that staff should conduct presentations because staff is ultimately responsible for presenting the framework, Chairman Gilliland opined it would be okay if a presentation came from someone else as long as Commissioner questions could be directed to staff.

Vice-Chairman Davis remarked that questions should funnel through staff the same as they would be funneled through the Chair. Mr. Santaella reminded the Commissioners that if there were a public comment on a non-agendized item, the item should be placed on the agenda of a future meeting or reviewed by staff.

Chairman Gilliland stated he would be in favor of moving the citizen input section to the beginning of the meeting in order to separate the general comments from the items on the agenda. In response to a question by Commissioner Taunton, Ms. O'Connor explained that general comments were for non-agendized items and citizens would be allowed to comment separately for items on the agenda. It would be allowable for several citizens to give their time to one spokesperson in order for them to present a more coherent argument.

Commissioner McCall commented she is not always certain she has a complete understanding of what citizens try to convey during their time to speak and feels she does not have the opportunity to correct any misunderstanding. Ms. O'Connor suggested that in those cases, the Chair could request a representative of the citizen group to clarify their comments.

Mr. Santaella reiterated that the scenario would be fine for an agendized item, but if the item were not agendized, the Commissioner would need to request it be agendized at a later date. If it is important, the citizen will attend the next meeting to participate in an open discussion on the topic.

A discussion ensued concerning a situation that arose during the discussion of traffic calming policies and procedures. Citizens' comments inadvertently turned the discussion toward their personal issues concerning Pima Acres. It was the consensus of the Commissioners that in the future, it would be best not to comment on citizen input regarding non-agendized items. Mr. Meinhart suggested that having a second public comment section at the end of the meeting agenda would allow citizens to comment on topics relating to agendized items. Two public comment sections will be agendized at future meetings.

In response to a question by Ms. Arballo concerning comment cards turned in after an agenda item has been discussed, Chairman Gilliland stated that those citizens would be allowed to speak during the citizen comment section at the end of the meeting.

In response to an inquiry by Chairman Gilliland, Mr. Santaella explained that all meetings are public with the exception of Executive Sessions. The Retreat was posted with agendized items and anyone could have attended the meeting. The reason for categorizing the meeting as a Retreat was to indicate to the public that it would be more of an internal discussion about understanding the legal process.

In response to an inquiry by Vice-Chairman Davis, Mr. Santaella clarified that the Commissioner Comments section of the agenda is to be used for additional comments on agendized items. If there is a specific topic that a Commissioner would like to discuss, they can ask that the subject be agendized. Ms. O'Connor reiterated the Commissioner Comments category is meant for items that come up as a result of the meeting discussion that lead Commissioners to want to make further comment.

Commissioner Howard inquired what the procedure would be to get something on the agenda in a public way that wasn't already on the agenda. He commented that the public can show up and make a comment for three minutes on their choice of topic and Commissioners cannot. Vice-Chairman Davis reiterated that a request could be made to place an item on the agenda. Commissioner Howard opined that a Commissioner is not the Commission; he is a member of the public. Mr. Santaella reiterated that members of the Transportation Commission are acting as a public body. Anytime a public office is assumed, certain rights are restricted. Ms. O'Connor clarified that a request to agendize an item could be made for the next meeting.

Commissioner Taunton commented that he had made comments in the past on subjects such as editorials in the newspaper that he wanted to support. He opined there would be no point in agendizing that item because it was just a general commissioner comment. Mr. Santaella stated that personal comments could be made outside of the meeting.

Further discussion ensued concerning restrictions imposed on Commissioners comments.

Commissioner Howard opined that because he is an appointed federal official, that made him a special government employee. Ms. O'Connor reiterated that while on the Commission he is a member of the public body. Commissioners are

free to speak as a member of the public at the meetings of other Commissions, as long as they do not represent themselves as speaking for the Transportation Commission.

In response to a question by Mr. Meinhart, Mr. Santaella explained that the agendized topic "Identification of Future Agenda Items" was legal, but suggested there should not be long conversations about items during that time. The Commission decided to replace the "Commissioner Comments" section of the agenda with an "Identification of Future Agenda Items" section.

Commissioner McCall commented that Commissioner Taunton's comment on the editorial item was informational for her, because she was unaware of the situation. Mr. Santaella clarified that the specific legal exception in Statute ARS 38-431.02 (K), of the Open Meeting Law allows Commissioners to provide a brief summary of current events as long as they do not discuss, propose, deliberate, or take legal actions. The statute states that if a commissioner is going to provide a summary of current events, it should be noted as an agenda item on the agenda. (The agenda item does not have to specify a description of the summary.)

In response to a question by Commissioner Taunton, Mr. Santaella suggested that if Commissioners have a question for staff concerning a non-agendized item, they should contact staff outside of the meeting.

In response to an inquiry by Commissioner McCall concerning the legality of an "Old Business" section on the agenda, Mr. Santaella suggested that specific old business should be agendized, including enough information for the public to know what would be discussed.

Chairman Gilliland commented that a lot of different topics are addressed under the heading of "Project Updates". Ms. O'Connor noted that staff focuses their presentation on certain projects unless there are Commissioner questions pertaining to another project. Mr. Santaella suggested that "Project Updates" be agendized as an update from City staff on current transportation projects and a question and answer by the Commission. This will be broad and specific enough to let citizens know that any City project could be discussed.

Commissioner McCall opined that Commissioners should receive correspondence that comes into meetings within a week after the meeting instead of attached to the minutes. This would allow for the subject to be added to the next agenda if necessary. Chairman Gilliland stated there is a process that should be followed and items that are presented at the end of a meeting are to be attached to the minutes for review. Ms. O'Connor clarified that the agenda could be revised up to 24 hours in advance of the meeting.

In response to a question by Commissioner McCall, Mr. Santaella confirmed that Commissioners may respond to citizen e-mail in any way they would like to. The Commissioners are not obligated to, or prohibited from sharing the e-mails with fellow Commissioners. The e-mails could be forwarded to Ms. Arballo who would forward it to the other Commissioners with the "do not respond" attachment.

Ms. O'Connor reminded the Commissioners that their e-mail is public record. She recommended that a separate e-mail account be kept for Transportation Commission correspondence; Commissioners are not obligated to provide an e-mail address for public use. Although response to e-mail is not regulated, Ms. O'Connor recommended caution when having dialogue with citizens so that there is not an appearance of being lobbied.

Chairman Gilliland opined it is difficult to deal with giving equal time to proponents from two different sides of an issue. Although Commissioners may appear unresponsive, it is better to avoid the situation. Commissioner Howard opined that Commissioners have a responsibility to be a channel of public input into debate on issues. Chairman Gilliland reiterated that citizens are able to attend a meeting and fill out a public speaking card.

2. Response to City Council Request for Review of Commission Ordinance and Bylaws

Ms. O'Connor noted that the Commission has been provided with highlighted comments on the bylaws and the ordinance that staff considered technical corrections.

In response to a request by Chairman Gilliland, Ms. O'Connor reviewed the contents of the packet provided to the Commission. Ordinance 2046 established the Transportation Commission; it was a historical document for review. Section 2-280 of the Ordinance under the heading of "Transportation Commission" and the section on the "Purpose, Powers and Duties" were subject to amendment. Mr. Santaella clarified that the reason for an ordinance review is that the Ordinance states the Commission must periodically review and make recommendations for revision.

Ms. O'Connor discussed some of the technical issues that could be changed. In the first paragraph under "Purpose, Powers, and Duties," the text about the movement of motor vehicles, pedestrians, and bicycles on the street, parkways, and expressways could be more specific and include public transportation in order to include trollies, light rail and city buses. Under subset A, the five year capital improvement program for streets, she suggested replacing the word "streets" with "transportation". Under subset C, she suggested the term "street element" be replaced with "community mobility element." Ms. O'Connor recommended deleting the phrase "concept report" on the Street Master Plan Concept Report and then reviewing/consolidating and/or deleting the "1988 Proposed Transportation Plan" and the "1988 Bicycle Task Force report".

Commissioner Taunton suggested under subset G, the word "complaints" be changed to "comments" or "input". Commissioner Taunton discussed with Ms. O'Connor simplifying subset H to include "programs to improve traffic movement and safety" and remove the listing that is obsolete.

Mr. Santaella directed attention to the section under subset G that included the ordinance provision that the Transportation Commission must always allow public comment.

In response to an inquiry by Chairman Gilliland, Mr. Santaella clarified that division four is a division of chapter two of the City Code, and the Transportation Commission's task was specifically to review division four and recommend any appropriate changes to City Council. Mr. Santaella reiterated that changes to the Ordinance would be passed by City Council, but the bylaws could be changed within the Commission.

Mr. Santaella confirmed that once the Ordinance is passed by City Council, it is codified and converted to municode so that it will be more convenient to read. The municode format is what is posted on the website; upper case letters indicate sections that have been changed.

In response to an inquiry by Chairman Gilliland, Mr. Santaella explained that the Commission is authorized to establish rules, regulations, and procedures to conduct its own affairs. With an affirmative vote, the Commission can amend or create new bylaws as it sees fit. With the Ordinance, the Commission would send a report to City Council requesting any changes. Ms. O'Connor clarified that the reason for this review is to make certain everyone is clear, comfortable, and up to date with his or her rules and responsibilities.

Mr. Santaella clarified that subsection A of section 2-282 provides a provision that specifically empowers the Commission to supersede the general provision that would allow them to eliminate the Roberts Rules requirement.

Ms. O'Connor referred to the suggested technical changes to the bylaws. Staff suggested that references to "Secretary" be changed to "Commission Coordinator" to reflect Ms. Arballo's role and to avoid any confusion that there may be a member of the Commission who acts as the secretary.

Ms. O'Connor noted in section 201, the reference to canceling a future meeting by a majority vote conflicts with the section that states that notification of cancellation be posted 24 hours in advance. Mr. Santaella suggested that the statement might imply that a meeting could not be cancelled even if there were no quorum. In response to a comment by Commissioner Howard that there was no provision for rescheduling a meeting, Mr. Meinhart stated in that situation the meeting would be considered a special meeting. Commissioner Howard commented that under section 202 there was no provision for meeting cancellation over weekends or holidays. He opined that there should be reference to business days.

Ms. O'Connor suggested that under section 205 which referred to a member being absent for four consecutive meetings that the phrase "in the absence of exceptional circumstances" be inserted. She opined that a Commissioner should not be removed without good cause. With the suggested change, the Chair would have the authority to decide whether special circumstances were warranted.

Ms. O'Connor recommended deleting the specific requirement to use Roberts Rules. Chairman Gilliland opined that Roberts Rules were too rigid, but deleting the requirement would leave the Commission without guidance. It was the

consensus of the Commission that the reference would be changed to state that Roberts Rules would be used as a guide and the Chair would have authority to make the ultimate decision.

A discussion ensued in response to a question by Chairman Gilliland regarding the Chair or Vice-Chair being required to sign all written communication to outside groups. Chairman Gilliland stated he was not certain if the letter was actually representing the Commission because he did not have input from fellow Commissioners. It was the consensus of the Commission that language would be added to all letters clarifying that the signature of a Commissioner represents the Commission. Mr. Santaella clarified that all official correspondence would be on Transportation Commission letterhead and individual Commissioner letters would be on their own letterhead.

Ms. O'Connor stated that staff would agendize a review of the recommended changes for the next meeting.

In response to an inquiry by Commissioner Taunton about how the individual elements of the master plan would be voted on, Ms. O'Connor explained that a finalized document incorporating all of the sub-elements that would have been previously reviewed would be brought to the Commission for recommendation. City Council is expecting to see the Transportation Master Plan in the first half of 2007, which should leave enough time for review and a formal community outreach. The bylaws require a formal public hearing in addition to the community outreach before the Master Plan can be finalized.

3. Agenda Items for May Retreat

Chairman Gilliland inquired whether there was a reason to have a working session in May. He noted there are full regular meetings scheduled for April and May, and that traffic calming updates would not be an appropriate topic for a working session. He inquired whether the joint meeting with the Planning Commission could be held in place of a regular meeting. Ms. O'Connor reminded Chairman Gilliland that the decision on the downtown trolley was scheduled for the May meeting and they would be expecting extensive community input.

Ms. O'Connor explained that the joint meeting has been requested for May because the Planning Commission would like to have a stronger role in the Transportation Master Plan because of their role in the General Plan. It would be a good idea for the Transportation Commission to receive input from the Planning Commission prior to the Transportation Master Plan appearing before the City Council in May. She suggested that the Transportation Commission formulate some generalized recommendations for the City Council for the May meeting because it will be an opportunity for the Council to hear input from the Commissions.

In response to an inquiry by Chairman Gilliland concerning whether the Transportation Master Planning Team could make a presentation to the Planning Commission, Ms. O'Connor explained that presentation has already been made. The Planning Commission would like to meet with their peers.

Commissioner McCall noted a conflict with the regular scheduled meeting on May 18.

In response to a suggestion by Chairman Gilliland that the Chair of the Planning Commission attend the Transportation Commission meeting to relay Planning Commission comments, Ms. O'Connor clarified that there were other Planning Commissioners who had an interest in the discussion.

Commissioner Taunton suggested that time would be saved during the meetings if updates discussed in the study session would not be revisited during the regular session.

Mr. Santaella suggested changing the bylaws regarding the regular Transportation Commission Meeting being held on the third Thursday of every month in order to provide more flexibility. Vice-Chairman Davis opined that having the regular meeting scheduled for every third Thursday was more convenient. Commissioner Gilliland suggested the wording be changed to say the Transportation Commission "generally" meets on the third Thursday so that a cancellation notice does not have to be posted if the meeting is cancelled.

Chairman Gilliland confirmed that Ms. Arballo would coordinate schedules with the Planning Commission in order to schedule a joint meeting.

Adjournment

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 5:42 p.m.

Respectfully submitted,
A/V Tronics, Inc.

***NOTE: VIDEO AND/OR AUDIO RECORDINGS OF SCOTTSDALE TRANSPORTATION COMMISSION MEETINGS ARE AVAILABLE FROM THE SCOTTSDALE TRANSPORTATION DEPARTMENT FOR UP TO SIX MONTHS FOLLOWING THE MEETING DATE.**

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Officially approved by the Transportation Commission on _____